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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,696	12/16/2001	Michael Brock	MULLER-27	6217

7590 01/12/2005

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EXAMINER	
WANG, SHENGJUN	

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/890,696	BROCK ET AL.	
	Examin r	Art Unit	
	Shengjun Wang	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 September 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 30, 2004 has been entered.

Claim Rejections 35 U.S.C. 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerg et al. (US 6,132,738, IDS) in view of Balzer (US 5,605,651) and Bergmann et al. (US 5,077,040), in further view of Ansmann et al. (EP 771,559).

3. Lerg et al. teaches a cosmetic cleansing composition for shower comprising fatty alcohol ether sulfate alkanolammonium salt, or fatty alcohol sulfate alkanolammonium salt; an oil component, which may be triglycerides; a low alky alcohol, such as propylene glycol, and other well known cosmetic additives, including surfactant. See, particularly, the examples in columns 7 and 8. and the claims. Lerg et al. further teaches that it is considered within the skill of artisan to formulate various forms of oil containing composition, including oil-in-water emulsion, by using proper surfactant. See, particularly, column 1, lines 35-47. Lerg et al. point out that artisan

is motivated to make concentrated form simply because concentrated form are convenient (compared to diluted, which would require large amounts when used). See, col. 2, lines 1-6.

4. Lerg et al. does not teach expressly a diluted form, i.e., with substantially amount of water, and in the form of microemulsion.

5. However, Balzer teaches that fatty alcohol ether sulfate alkanolammonium salt, or fatty alcohol sulfate alkanolammonium salt, are known to be an emulsifier, particularly, in cosmetic or pharmaceutical composition containing oil components. Bergmann et al. teaches that fatty alcohol ether sulfate alkanolammonium salt are known to be useful in cosmetic microemulsion compositions as surfactant. See, particularly, column 18, lines 34-60. Ansmann et al. disclose that diluted cosmetic or pharmaceutical emulsion with alkenyl(ether) sulphate (including alkanolamino salt) is known in the art. See, particularly pages 2-3 and the examples therein.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to dilute the composition of Lerg et al. with water and formulate the composition into microemulsion form accordingly.

6. A person of ordinary skill in the art would have been motivated to dilute the composition of Lerg et al. with water and formulate the composition into microemulsion form because fatty alcohol ether sulfate alkanolammonium salts, or fatty alcohol sulfate alkanolammonium salts are known to be useful as emulsifier, and are particularly useful in microemulsion cosmetic composition. It is noted that diluted cosmetic or pharmaceutical emulsion with alkenyl(ether) sulphate (including alkanolamino salt) is known in the art. Furthermore, the optimization of a result effective parameter, e.g., particularly surfactant, or the amounts of each and every ingredient, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204

USPQ 215. With respect to the newly added claims 18 and 19 which recite C3-hydroxyalkyl as R4 (claim 18), and hydroxylisopropyl in particular (claim 19), note Lerg disclose ammonium salt wherein Rs may be hydroxyl alkyl radical having from 1-24 carbon (column 2, lines 55-67), and Balzer particularly teaches the ammonium salt of fatty alcohol sulfate with C2-C3 alkanolammonium (column 3, lines 54-60). A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." In re Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994). A diluted forms of a known cosmetic or pharmaceutical composition, even though known to be inferior (for its inconvenience), is deemed obvious to its concentrated form, and is not patentable distinct from the known concentrated form.

7. Claims 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermann et al. (US 4,371,584, IDS) in view of Balzer (US 5,605,651) and Bergmann et al. (US 5,077,040), and in further view of Ansmann et al. (EP 771,559).

8. Hermann et al. teaches a cosmetic cleansing composition for shower comprising fatty alcohol ether sulfate, or fatty alcohol sulfate; and polyalkanolamine, such as isopropanolamine or diisopropanolamine; an oil component, which may be triglycerides; a low alky alcohol, such as propylene glycol, and other well known cosmetic additives, including surfactant. See, particularly, column 1, line 35 bridging column 2, line 24, the examples in columns 3 and 4, and the claims.

9. Hermann et al. does not teach expressly a diluted form, i.e., with substantially amount of water, and in the form of microemulsion.

10. However, Balzer teaches that fatty alcohol ether sulfate alkanolammonium salt, or fatty alcohol sulfate alkanolammonium salt, are known to be an emulsifier, particularly, in cosmetic or pharmaceutical composition containing oil components. Bergmann et al. teaches that fatty alcohol ether sulfate alkanolammonium salt are known to be useful in cosmetic microemulsion compositions as surfactant. See, particularly, column 18, lines 34-60. Ansmann et al. disclose that diluted cosmetic or pharmaceutical emulsion with alkenyl(ether) sulphate (including alkanolamino salt) is known in the art. See, particularly pages 2-3 and the examples therein.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to dilute the composition of Hermann et al. with water and formulate the composition into microemulsion form accordingly.

11. A person of ordinary skill in the art would have been motivated to dilute the composition of Lerg et al. with water and formulate the composition into microemulsion form because fatty alcohol ether sulfate alkanolammonium salts, or fatty alcohol sulfate alkanolammonium salts are known to be useful as emulsifier, and are particularly useful in microemulsion cosmetic composition. Further, it is noted that diluted cosmetic or pharmaceutical emulsion with alkenyl(ether) sulphate (including alkanolamino salt) is known in the art. Furthermore, the optimization of a result effective parameter, e.g., particularly surfactant, or the amounts of each and every ingredient, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215. With respect to the newly added claims 18 and 19 which recite C3-hydroxyalkyl as R4 (claim 18), and hydroxylisopropyl in particular (claim 19), note Hermann disclose the amine moiety of the ammonium salt may be isopropanolamine, mixed alkanolalkylamines, and Balzer particularly teaches the ammonium salt of fatty alcohol sulfate

with C2-C3 alkanolammonium. A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." In re Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994). A diluted forms of a known cosmetic or pharmaceutical composition, even though known to be inferior (for its inconvenience), is deemed obvious to its concentrated form, and is not patentable distinct from the known concentrated form.

Response to the Arguments

Applicants' amendments and remarks submitted July 2, 2004 have been entered and fully considered, but are not persuasive.

12. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As discussed above, what is claimed herein read on a diluted bathing composition known in the art. It is well-settled that a known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." In re Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994). A diluted forms of a known bathing composition, even though known to be inferior (for its inconvenience), is deemed obvious to its concentrated form, and is not patentable distinct from the known concentrated form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SHENGJUN WANG
PRIMARY EXAMINER

Shengjun Wang
Primary Examiner
Art Unit 1617